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that length, and so broad a doctrine has never been asserted. Even then it would have been allowing the jury to draw an inference of one fact, from another fact, itself only an inferential conclusion. For the question in this case was whether Peter Shive wrote the signatures. It is, however, not necessary to decide this.

If the testimony was admissible in this case the plaintiffs in error might have gone on and submitted specimens of the handwriting of other persons A., B., C., and D., indefinitely, specimens selected by themselves, that the jury might determine from comparison whether some one of them had not written the signatures, and therefrom infer that Peter Shive had not. The danger of fraud in the selection of specimens, and the danger of surprise to the opposite party, are too great to warrant the allowance of any such instruments of proof. The 1st and 2d assignments of error are not sustained.

The 3d assignment is, that the court directed a verdict different from the finding of the jury. We do not understand such to have been the fact. The verdict is the one rendered in court, not that which had been sealed up and brought in. The paper brought in by the jury in this case was exceedingly unlettered, but it was a general verdict for the plaintiff below, and without asking an explanation from the jury the court might have moulded it into the form in which the verdict was recorded. The court simply asked an explanation, and it was given in open court. Then the jury declared that they meant to find what the record shows their verdict to have been. In all this we discover no error.

Judgment affirmed.

United States Circuit Court, Southern District of New York.

ARCHIBALD HOPKINS v. ALEX. F. WESTCOTT ET AL.

A person receiving a printed notice on his ticket or check at the time of delivering his goods to a carrier is to be charged with actual knowledge of the contents of the printed notice.

Where such a notice stated that the carrier would not be responsible "for merchandise or jewelry contained in baggage, received upon baggage checks, nor for loss by fire, nor for an amount exceeding \$100 upon any article, unless specially

agreed for," &c., the words "any article" mean any *separate* article, not a trunk with its contents. The language bears that construction, and must be taken strictly against the carrier.

Therefore, a traveller who gave a single trunk to a carrier and received such a notice, was allowed to recover the value of separate articles in the trunk amounting to \$700.

Baggage includes such articles as are usually carried by travellers. Books and even manuscripts may be baggage, according to the circumstances and the business of the traveller.

In this case a student going to college was allowed to recover the value of manuscripts which were necessary to the prosecution of his studies.

THIS was an action against an express company for loss of baggage. The following facts were agreed upon:—

The defendants are carriers of baggage in the city of New York.

The plaintiff delivered to the defendants a railroad baggage-check to enable them to obtain his trunk at the depot, and deliver the same at his residence in the city, no rate of compensation being named.

The defendants obtained the trunk, but lost it.

Upon the delivery of the check to the defendants, they delivered to the plaintiff a paper upon which the number of the check was indorsed, and which contained also the following printed matter: "The Westcott Express Company will not become liable for merchandise or jewelry contained in baggage received upon baggage-checks, nor for loss by fire, nor for an amount exceeding \$100, upon any article, unless specially agreed for in writing on this check-receipt, and the extra risk paid therefor * * * And the owner hereby agrees that the Westcott Express Company shall be liable only as above." This printed matter, however, the plaintiff did not read at the time it was delivered to him, nor till after notice from the defendants that his trunk was lost.

The general custom of express companies is to charge forty cents for every trunk, and twenty-five cents in addition for every \$100 of value beyond \$100. Plaintiff was ignorant of this custom.

The defendant was a student at Columbia College, and was proceeding to New York for the purpose of prosecuting his studies at that institution; and certain manuscript books which formed part of the contents of his trunk, were necessary to the prosecution of his studies.

SHIPMAN, J.—It has been remarked by a learned and accurate

writer, "that a common carrier may qualify his liability, by a general notice to all who may employ him, of any reasonable requisition to be observed on their part in regard to the manner of entry and delivery of parcels, and the information to be given him of their contents, the rates of freight, and the like; as, for example, that he will not be liable for goods above the value of a certain sum, unless they are entered as such and paid for accordingly:" 2 Greenleaf's Ev. § 215. But in the case now before the court, the defence does not rest upon a general notice, constructive knowledge of which the plaintiff is to be charged with by proof that it was generally and widely promulgated. It rests on a special printed notice, put into the hands of the plaintiff at the time he delivered his check to the defendants. It can make no difference that the plaintiff did not choose to read it until after he had notice that his trunk was lost. He received it at the time he parted with his check; it was legibly printed, and he must be charged with actual notice of its contents. By its terms it qualified the duty or liability of the defendants, and limited their responsibility in case of loss to an amount not exceeding \$100 for any article, unless the plaintiff should disclose such articles, and have the fact indorsed on the paper, as well as pay for the extra risk. It excluded all liability for merchandise and jewelry. Though, as will be seen in the sequel, this point is of no practical importance in this suit, in view of the construction which I shall give this notice, yet I am unwilling to leave it to be inferred that I entertain any doubt of the power of the carrier to qualify his responsibility by special notice actually given to the owner under circumstances like these. In *The Orange County Bank v. Brown*, 9 Wend. 115, Judge NELSON, speaking for the court, says of the carrier: "If he has given general notice that he will not be liable over a certain amount, unless the value is made known to him at the time of delivery, and a premium for insurance is paid, such notice, if brought home to the knowledge of the owner (and courts and juries are liberal in inferring such knowledge from the publication of the notice), is as effectual in qualifying the acceptance of the goods as a special agreement, and the owner must, at his peril, disclose the value and pay the premium." Here, in the case before us, we are not left to a general notice to be charged upon the plaintiff on the ground of its general publication, and which, though he had seen, he might have forgotten;

but the notice was served upon him at the time he sought the services of the carrier. I can have no doubt, therefore, that the plaintiff was bound by the notice, and that the carrier incurred no responsibility which his notice, properly construed, excluded. But here a more difficult question presents itself. The list of the contents of this trunk and the value of each article thereof are agreed to, and they amount in the aggregate to \$744.10. It was contended on the argument that the notice limited the liability of the carrier to \$100, unless a greater value was disclosed, and that, as no greater value was disclosed, judgment should be rendered for that sum only. But so far from giving this notice a liberal construction in favor of the carrier, I am inclined to construe it strictly against him. The rule which holds carriers to strict responsibility is founded upon high considerations of public policy and the security of the property of travellers. Every limitation of this responsibility should be expressed in each case in clear and unequivocal terms. Notices of this character should, therefore, be construed strictly against the carrier. They are given to travellers of all ages and sexes, in the bustle of rapid transit from one place to another, in crowded vehicles and depots, and they should be free from all doubt or ambiguity, so that their contents should be clearly apprehended at a glance. Now, some portions of the defendants' notice in this case are clear and explicit. It declares that they will not be liable for merchandise or jewelry contained in baggage received upon baggage-checks. No matter what their value, they do not choose to engage in the transportation of such articles as baggage. They further give notice that they will not be liable for losses by fire. Where there is no question of gross or wilful neglect, or recklessness, or malfeasance, or misfeasance, these restrictions being plainly expressed and communicated to the owner at the time of the engagement, without doubt are binding upon him. But after designating merchandise and jewelry, and exempting them, as well as losses by fire, the notice adds: "Nor for an amount exceeding \$100 upon any article unless specially agreed for in writing on this check-receipt, and the extra risk paid thereon." The question arises, whether the term "any article" here refers to a trunk or piece of baggage and its entire contents in gross; or whether it is to be confined to each separate article contained therein. In other words, does it limit the liability of the carrier for the loss of a

trunk and its contents, or does it leave him liable for each article contained in the trunk, according to its value, not exceeding \$100 for any single item? The terms "merchandise" and "jewelry" refer expressly to articles "contained in baggage received upon baggage-checks"—that is, to the contents of trunks and packages, and excludes liability upon the articles specified. When limiting the liability to \$100 upon any one other article, I think it should be held also to refer to the separate contents of the trunks or packages, and not to the whole in gross. This strict construction is in harmony with the policy of the law, and essential to the protection of the community in view of the constant devices of carriers to escape the responsibilities of their calling, while their eagerness to obtain the patronage of the public remains unabated. Now I can well conceive that they are unwilling to take the risk of carrying expensive articles of dress, such as costly furs, shawls, and other valuable paraphernalia of an extravagant modern wardrobe, a single item of which is often valued at many hundreds of dollars, without notice of value and pay for the risk. But it may well be doubted whether they intend by such notices as the one under consideration to apprise the owner that they decline all responsibility beyond \$100 on each trunk and its contents, unless a special contract is made. A good trunk is worth half that sum, and often more, and the value of an ordinary traveller's trunk and necessary contents would usually exceed that sum. But whatever be the intentions of carriers, they must be so expressed as to leave no room for doubt as to their meaning, or they cannot be permitted to qualify their liability as fixed by the general rules of law applicable to their calling. As was remarked by BEST, C. J., in *Brooke v. Pickwick*, 4 Bing. 218, "If coach proprietors wish honestly to limit their responsibility, they ought to announce their terms to every individual who applies to their office, and at the same time to place in his hands a printed paper specifying the *precise extent* of their engagement." And certainly where they make no oral communication, but merely thrust into the hand of the traveller a small printed ticket, the notice which that contains should be explicit, and leave nothing to be made out by construction. Where there is any doubt as to its meaning, it should be construed strictly as against the carrier.

As to the general custom of express companies to charge extra

for every package over \$100 in value, I do not think that has any bearing on this case. Even admitting that they could change their liabilities by a sweeping custom (which may well be doubted), no price was demanded or named in this case, and, therefore, the custom has no bearing upon the controversy. Among the contents of this trunk were five manuscript books, no one of which exceeded in value \$100, but the defendants insist that they are not liable at all for these, on the alleged ground that they cannot be properly termed baggage. In *Hawkins v. Hoffman*, 6 Hill 589, Judge BRONSON remarks: "An agreement to carry the ordinary baggage may well be implied from the usual course of business; but the implication cannot be extended a single step beyond such things as the traveller usually has with him as a part of his luggage. It is undoubtedly difficult to define with accuracy what shall be deemed baggage within the rule of the carrier's liability. I do not mean to say that the articles must be such as every man deems essential to his comfort, for some men carry nothing, or very little, with them when they travel, while others consult their convenience by carrying many things. Nor do I mean to say that the rule is confined to wearing apparel, brushes, razor, writing apparatus, and the like, which most persons deem indispensable. If one has books for his instruction or amusement by the way, or carries his gun or fishing-tackle, they would undoubtedly fall within the term baggage, because they are usually carried as such. This, I think, a good test for determining what things fall within the rule." Now, it may safely be said that books constitute to some extent a part of the baggage of every intelligent traveller, and especially is this the case with scholars, students, and members of the learned professions. There is no reason why they should not be under the protection of the law as against the negligence of carriers, as well as any other portions of their luggage.

But, it is said that no case can be shown where the carrier has been held liable for manuscripts. No such case has been cited, and, in my researches, I have found none. But I see no reason for adopting a rule by which they should be excluded under all circumstances from the list of articles termed baggage. With the lawyer going to a distant place to attend court, with the author proceeding to his publishers, with the lecturer travelling to the place where his engagement is to be fulfilled, manuscripts often

form, though a small, yet indispensable, part of his baggage. They are carried as such, in his trunk or portmanteau, among his other necessary effects. They are indispensable to the object of his journey, and, as they are carried with his baggage in accordance with universal custom, I see no reason why they should not be deemed as necessary a part of his baggage as his novel or fishing-tackle. In the present case the manuscript books lost are admitted to be necessary articles for the student at the institution to which he was proceeding. They must, under all the circumstances, be deemed a part of his baggage, for which the defendants are liable. There was one article of jewelry in the list for which, of course, they are not responsible, as all jewelry was excepted by specific designation. This, however, will make no difference with the amount of the judgment, as by the stipulation of the parties it is not to exceed \$700, the sum demanded in the declaration, and the aggregate of the agreed value of the list is \$744.10. Let judgment be entered for the plaintiff for \$700, with costs.

Circuit Court of the United States, Northern District of Illinois.

DION BOURCICAULT v. JOSEPH H. WOOD.

Under the Act of 1856 an author who has filed a copy of his title-page but not yet published his play, may have an action at law for damages for the representation of his play without his consent.

A *resident*, in the meaning of the Copyright Acts, is a person *domiciled* in this country, not a mere sojourner.

In an action for infringement of copyright in a play, the copyright and the fact of representation being established, the burden is on defendant to show the author's consent to the representation. Mere publication is not permission to perform it.

A foreigner, resident in this country, who has filed a copy of the title-page of a play, but has not published, is entitled to the protection of the Copyright Laws, but a subsequent publication in a foreign country would be an abandonment of his rights under the Copyright Act of this country.

If there has been no publication at all by the author of a play, he has a right at common law to damages for the representation of his play from a manuscript obtained without his consent.

DION BOURCICAULT, the plaintiff, a foreigner, resided in the United States from 1854 to 1861, and, whilst in New York, composed and took measures to copyright three plays, "*Pauvrete, or the Avalanche*," "*The Octoroon*," and the "*Colleen Bawn*."